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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SANDRA L. FERGUSON,

11 Plaintiff,

12 v.

13 BRIAN J. WAID AND THE WAID
14 MARITAL COMMUNITY,

15 Defendants.

Case No. C17-1685RSM

ORDER GRANTING MOTION TO RESET
THE TRIAL AS A JURY TRIAL

16 This matter comes before the Court on Plaintiff's Motion to Reset the Trial as a Jury
17 Trial. Dkt. #109. Defendants oppose this Motion.

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19 "When a jury trial has been demanded under Rule 38, the action must be designated on
20 the docket as a jury action. The trial on all issues so demanded must be by jury unless... the
21 parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record..."
22 Fed. R. Civ. P. 39(a). Issues on which a jury trial is not properly demanded are to be tried by
23 the court. Fed. R. Civ. P. 39(b). But the court may, on motion, order a jury trial on any issue
24 for which a jury might have been demanded. *Id.* Although an untimely jury demand waives a
25 party's right to trial by jury, a court should "indulge every reasonable presumption against
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1 waiver of the jury trial right.” *Lutz v. Glendale Union High Sch.*, 403 F.3d 1061, 1064 (9th Cir.
2 2005) (internal quotation omitted).

3 Plaintiff filed a demand for a jury trial on December 27, 2017. Dkt. #13. This demand
4 was timely because it was filed within 14 days of her Answer to Defendant’s Counterclaims,
5 Dkt. #8. She did not specify issues she wished to have tried by a jury, therefore she has
6 demanded a jury trial on all issues so triable. Fed. R. Civ. P. 38(c). After this was filed, the
7 Court designated this trial as a jury trial on the docket. However, the Court set this trial for a
8 bench trial in the Scheduling Order. Dkt. #55 at 1. This was due to references to a bench trial
9 contained in the parties Joint Status Report, Dkt. #19. Specifically, Plaintiff stated she was
10 “open to the possibility of a bench trial” under a section titled “Bifurcation,” and also stated
11 “Plaintiff is open to considering a partial or full bench trial with bifurcation of liability and
12 damages if the case goes to a jury.” Dkt. #19.

15 The instant Motion was filed four months after the Court’s Scheduling Order. The
16 Court finds that Plaintiff did not stipulate to a nonjury trial by stating in the Joint Status Report
17 that she was “open to” a bench trial. Her failure to object to the Court’s Scheduling Order until
18 now does not otherwise constitute a waiver. Defendants cite to no equivalent Ninth Circuit
19 cases where a Court denied trial by jury based solely on an erroneous scheduling order.
20 Accordingly, trial must be by jury. The Court is cognizant of Defendant’s prejudice arguments.
21 Any concerns are outweighed by Plaintiff’s right to trial by jury, and Defendants still have over
22 two months to prepare motions in limine and other pretrial filings.

25 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,
26 and the remainder of the record, the Court hereby finds and ORDERS that Plaintiff’s Motion to
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1 Reset the Trial as a Jury Trial, Dkt. #109, is GRANTED. The clerk is directed to issue an
2 amended scheduling order setting trial by jury for November 13, 2018.

3 DATED this 13 day of August, 2018.

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5 RICARDO S. MARTINEZ
6 CHIEF UNITED STATES DISTRICT JUDGE
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